

## **REMARKS/ARGUMENTS**

The present response replies to the Office Action dated August 21, 2009. Claims 1-33 are pending in the present application. Claims 11-32 were previously withdrawn. Claims 1, 2, 6, and 7 have been amended, claims 3 and 8 cancelled, and claims 34 and 35 added herein. In the Office Action, the Examiner rejected claims 1-10 and 33 on various grounds. In view of the amendments and following remarks, favorable consideration and allowance of the application is respectfully requested.

### **Double Patenting**

The Examiner noted the provisional rejection of claims 1-10 and 33 on the grounds of nonstatutory obviousness-type double patenting as being unpatentable over claim 3 of copending application 10/827,817. Because the copending claims of application 10/827,817 may change during prosecution, the Applicants will consider filing a terminal disclaimer when the present application is otherwise in condition for allowance.

### **35 U.S.C. §102 Rejections**

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the . . . claim. *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Thus, to warrant the §102 rejection, the references cited by the Examiner must show each and every limitation of the claims in complete detail. The Applicants respectfully assert that the cited references fail to do so.

A. Claims 1-10 and 33 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 5,356,433 to Rowland, *et al.* (the *Rowland* patent).

The Applicants respectfully assert that the *Rowland* patent fails to disclose, teach, or suggest a stent delivery system including a polymer coating disposed on the silane layer, as recited in claim 1; a coated stent including a polymer coating disposed on the silane layer, as recited in claim 6; or a coated stent including a polymer coating disposed on the amino silane layer, as recited in claim 33. At most, the *Rowland* patent discloses covalently linking an organosilane having amine reactive sites with the surface of the metallic member, and covalently linking a biologically active agent to the organosilane coating. *See* Abstract.

Claims 2, 4, and 5, and claims 7, 9, and 10 depend directly from independent claims 1 and 6, respectively. Therefore, the dependent claims include all the elements and limitations of their respective independent claims. The Applicants respectfully submit that dependent claims 2, 4, 5, 7, 9, and 10 are allowable over the *Rowland* patent for at least the same reasons as set forth above with respect to their respective independent claims.

Regarding dependent claims 4 and 9, the Applicants respectfully assert that the *Rowland* patent fails to disclose the silane layer being selected from the group consisting of a monolayer, a multilayer, and a bulk phase layer.

Withdrawal of the rejection of claims 1, 2, 4-7, 9, 10, and 33 under 35 U.S.C. §102(e) is respectfully requested.

#### New Claims

Claims 34 and 35 have been added herein to more particularly point out and distinctly claim the Applicants' invention. Claims 34 and 35 are allowable over the cited reference for at least the reasons discussed above for their respective independent claims 1 and 6. No new matter has been added with the inclusion of claims 34 and 35, which are supported in the specification at least on page 7.

#### Conclusion

For the foregoing reasons, Applicants believe all the pending claims are in condition for allowance and should be passed to issue. The Commissioner is hereby authorized to charge any additional fees which may be required under 37 C.F.R. 1.17, or credit any overpayment, to Deposit Account No. 01-2525. If the Examiner feels that a telephone conference would in any way expedite the prosecution of the application, please do not hesitate to call the undersigned at telephone (707) 543-0221.

Respectfully submitted,

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